

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
DWAYNE DARNELL STEWART,

Plaintiff,  
-against-

ORDER  
11-CV-5236 (JS) (WDW)

SUFFOLK COUNTY CORRECTIONAL FACILITY,  
SHERIFF VINCENT F. DEMARCO,

Defendants.

-----X  
APPEARANCES:

For Plaintiff: Dwayne Darnell Stewart, Pro Se  
5570001  
Suffolk County Correctional Facility  
110 Center Drive  
Riverhead, NY 11901

For Defendants: No appearances

SEYBERT, District Judge:

Presently pending before the Court is the pro se Complaint brought by incarcerated pro se plaintiff Dwayne Darnell Stewart ("Plaintiff") pursuant to 42 U.S.C. § 1983 ("Section 1983"), accompanied by an application to proceed in forma pauperis. Upon review of the declaration in support of the application to proceed in forma pauperis, the Court determines that the Plaintiff's financial status qualifies him to commence this action without prepayment of the \$350.00 filing fee. See 28 U.S.C. §§ 1914(a); 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

Having reviewed the pro se Complaint, the undersigned declines to conclude at this stage that the within action is frivolous or malicious within the meaning of 28 U.S.C. § 1915.

While it may be that Plaintiff is unable to prevail on his claim, the Court's uncertainty does not justify dismissal at this early juncture. McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). Accordingly, the application to proceed in forma pauperis is GRANTED and the Court orders service of the Complaint without prepayment of the filing fee.

The Clerk of the Court is directed to forward to the United States Marshal for the Eastern District of New York copies of Plaintiff's Summons, Complaint, and this Order for service upon the Defendants without prepayment of fees. Furthermore, the Clerk is directed to mail a copy of this Order to the Plaintiff. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT  
JOANNA SEYBERT, U.S.D.J.

Dated: November 22, 2011  
Central Islip, New York